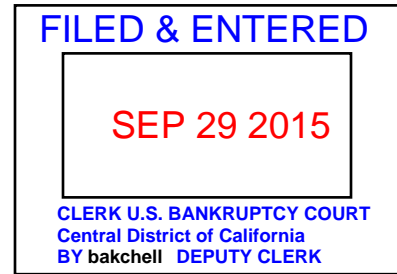


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CHANGES MADE BY COURT

ORDER NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re	)	Case No. 2:12-bk-16195 RK
)	
DAVID A. WILSON,	)	Chapter 7
)	
Debtor.	)	Adv. No. 2:12-ap-01317-RK
_____)	
THOMAS I. MCKNEW, IV and LISA A.	)	ORDER REJECTING PLAINTIFF'S
MCKNEW, individually and as Trustees of	)	PROPOSED ORDER HOLDING
the MCKNEW FAMILY TRUST DATED MAY	)	JUDGMENT DEBTOR IN CIVIL
21, 2004,	)	CONTEMPT OF COURT OF ORDER
	)	GRANTING JUDGMENT
Plaintiffs,	)	CREDITORS' MOTION TO COMPEL
	)	ANSWERS OF JUDGMENT DEBTOR
v.)	
)	
DAVID A. WILSON,	)	[Hearing Required on Contempt
	)	Motion]
)	
Defendant.)	
_____)	

ORDER REJECTING PLAINTIFFS' PROPOSED ORDER HOLDING JUDGMENT DEBTOR IN CIVIL
CONTEMPT OF ORDER GRANTING JUDGMENT CREDITORS' MOTION TO COMPEL ANSWERS OF
JUDGMENT DEBTOR

1 Pending before the court is a proposed order submitted without motion by Plaintiffs
2 Thomas I. McKnew, et al., entitled "Order Holding Judgment Debtor in Civil Contempt of
3 Court of Order Granting Judgment Creditors' Motion to Compel Answers of Judgment
4 Debtor," which was lodged on September 25, 2015. The proposed order seeks to hold that
5 "David Alan Wilson, the Judgment Debtor herein, is determined in civil contempt of court for
6 his failure to appear and answer questions put to him by the Judgment Creditors at his
7 Judgment Debtor Examination as Ordered by this Court in its Order Granting Judgment
8 Creditors' Motion to Compel Answers of Judgment Debtor."

9 However, a contempt proceeding for violation of an order of this court, including a
10 discharge injunction, may proceed as a contested matter by *motion*. *Barrientos v. Wells*
11 *Fargo Bank, N.A.*, 633 F.3d 1186, 1191 (9th Cir. 2011), *cited in*, 4 March, Ahart and Shapiro,
12 *California Practice Guide: Bankruptcy*, ¶ 22:110.1 at 22-14 – 22-15 (2014)(emphasis in
13 original); *see also*, Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure.
14 Moreover, it is axiomatic that under the Federal Rules of Bankruptcy Procedure, a request
15 for relief should be by written motion. Rule 9013 of the Federal Rules of Bankruptcy
16 Procedure provides in pertinent part: "A request for an order, except when an application is
17 authorized by these rules, shall be by written motion, unless made during a hearing."
18 Plaintiffs merely lodged their proposed order granting them relief to hold the judgment
19 debtor in contempt without a written motion as required by Rule 9013.

20 As set forth in the following recitals in the proposed order, Plaintiffs are apparently
21 laboring under a misunderstanding based on an unsupported assumption that they are
22 automatically entitled to an order holding the judgment debtor in contempt based on the
23 Stipulation regarding the order granting their motion to compel answers of the judgment
24 debtor: "The Stipulation Regarding Order Granting Judgment Creditors' Motion to Compel
25 Answers of Judgment Debtor (hereinafter referred to as the "Stipulation") submitted by the
26 Judgment Creditors, Thomas I. McKnew, IV, and Lisa A. McKnew, Individually and as
27 Trustees of The McKnew Family Trust Dated May 21, 2004 (hereinafter collectively referred

1 to as the "Judgment Creditors"), and the Judgment Debtor, David Alan Wilson (hereinafter
2 referred to as to "Wilson") (see Docket Item No. 497), was presented to this Court on
3 September 24, 2015. Based upon the recitals contained in the Stipulation, including, but not
4 limited to the admission that (1) "[t]he Judgment Debtor will not appear for a judgment
5 debtor examination pursuant to the Order" and (2) "[i]f the Judgment Debtor were to appear
6 at a judgment debtor examination pursuant to the Order, the Judgment Debtor would
7 continue to assert his Fifth Amendment privilege against self-incrimination in response to
8 the all of the questions asked of him by the Judgment Creditors." However, the judgment
9 debtor in this Stipulation did not stipulate to the relief that Plaintiffs seek in their proposed
10 order, that is, namely, that he is to be held in civil contempt of the court's order which
11 compelled his responses to the questions that Plaintiffs posed to him. That the judgment
12 debtor's continued refusal to answer the compelled questions may serve as a basis for a
13 contempt motion does not relieve Plaintiffs of their obligation to properly seek contempt
14 relief by motion under Rules 9013 and 9014 in order to accord procedural due process to
15 the responding party, the judgment debtor, unless he has stipulated to such relief, which he
16 has not. Accordingly, the court must reject Plaintiffs' proposed order since they have not
17 followed the rules and brought the appropriate motion for contempt.

18 **IT IS HEREBY ORDERED** as follows:

- 19 1. Plaintiffs' proposed order submitted without motion by Plaintiffs Thomas I.
20 McKnew, et al., entitled "Order Holding Judgment Debtor in Civil Contempt of
21 Court of Order Granting Judgment Creditors' Motion to Compel Answers of
22 Judgment Debtor," lodged on September 25, 2015, is hereby REJECTED.
- 23 2. The rejection is without prejudice to Plaintiffs' bringing a proper motion for
24 contempt under Rules 9013 and 9014 of the Federal Rules of Bankruptcy
25 Procedure, *see also, Barrientos v. Wells Fargo Bank, N.A., supra*, or obtaining

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2 the assent of the opposing party, the judgment debtor, to a stipulation that he be
3 held in civil contempt to be submitted for approval of the court with a proposed
4 order for approval of such a stipulation.
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24 Date: September 29, 2015



25 Robert Kwan
26 United States Bankruptcy Judge
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ORDER REJECTING PLAINTIFFS' PROPOSED ORDER HOLDING JUDGMENT DEBTOR IN CIVIL
CONTEMPT OF ORDER GRANTING JUDGMENT CREDITORS' MOTION TO COMPEL ANSWERS OF
JUDGMENT DEBTOR